SOUTH DAKOTA BOARD OF NURSING

IN THE MATTER OF THE LICENSURE

PROCEEDINGS

RE: MICHELE J. SCHMIDT, RN, CNP

FINDINGS OF FACT, CONCLUSIONS OF LAW

AND ORDER OF

REINSTATEMENT WITH LETTER OF REPRIMAND ON

CNP LICENSE

License Nos. RN-R022633

CNP-CP000294

Licensee.

The South Dakota Board of Nursing's ("Board") hearing on the Summary Suspension of the Licensee Michele J. Schmidt, RN, CNP, license numbers R-022633 and CP000294 ("Licensee"), came on for hearing before the South Dakota Board of Nursing at its office in Sioux Falls, South Dakota on June 19, 2009, at 10:00 a.m. Licensee appeared personally and by her attorney Brett A. Lovrien of Cadwell, Sanford, Deibert & Garry, P.C. The Board appeared by and through its attorney, Kristine K. O'Connell of Woods, Fuller, Shultz & Smith, P.C.

The Board considered the evidentiary testimony of the Licensee, Donna Keeler, and Diane Weller. The Board also considered its Exhibits (numbered 1through 7, and 10 inclusive) entered into evidence, as well as the Exhibits (numbered 8 and 9 inclusive) entered into evidence by the Licensee. The Board also considered the Affidavit, and other documents on file in this case, and being charged with the statutory obligation to protect the public health, safety, and welfare as set forth in SDCL § 36-9 and 36-9A, including the protection of the public from unsafe nursing practices and practitioners, the Board hereby makes the following:

FINDINGS OF FACT

- 1. That Michele J. Schmidt, RN, is licensed to practice as a registered nurse in the State of South Dakota, and holds license number R-022633.
- 2. That Licensee is licensed to practice as Certified Nurse Practitioner in the State of South Dakota, and holds license number CP-000294.
- 3. That the Licensee was employed as a mid-level CNP with the South Dakota Indian Urban Health (SDUIH) located in Sioux Falls, South Dakota from March 21, 2005 through August 10, 2008.
- 4. Licensee's collaborating physician during her time of employment with SDUIH was Dr. James Schaeffer. Licensee had a valid collaborative agreement for her term of employment at SDUIH.
- 5. Following her employment at SDUIH, the Licensee began working for Avera Clinics as a CNP. Her practice sites included Washington High School Clinic in Sioux Falls, South Dakota, McGreevy Acute Care Clinic in Sioux Falls, and later the Avera Tea Clinic in Tea, South Dakota.
- 6. In her employment with the Avera Clinics, as referenced above, Licensee entered into a collaborative agreement with Dr. Shari Eich for her multiple practice settings.
- 7. On or about September 26, 2008, Licensee obtained two prescription blanks from her previous employer, SDUIH.
- 8. On September 26, 2008, the Licensee wrote a prescription for the medication Concerta, 36 mg, for patient FG, which was presented and filled at a Walgreens pharmacy in Sioux Falls.

- 9. The next day the Licensee wrote a prescription for the medication Concerta 36mg, for patient FG, and dated the prescription for October 25, 2008. This prescription was presented to be filled at the Lewis Drug pharmacy in Tea, South Dakota on October 27, 2008.
- 10. The Pharmacist at the Lewis Drug in Tea questioned said prescription as it was date by the Licensee on a Saturday, and the prescription blank showed a SDUIH clinic address of Pierre, South Dakota.
- 11. The Pharmacist reported this information to the fiscal manager of SDUIH and also contacted the Licensee regarding this prescription.
- 12. Licensee did not have an active collaborating physician agreement at SDUIH for writing prescriptions at the time she wrote the two prescriptions for Concerta.
- 13. Licensee admitted to the writing of said prescriptions for patient FG and admitted that doing so was outside her collaborating agreement with Dr. Schaeffer.

From the foregoing Findings of Fact, the Board draws the following:

CONCLUSIONS OF LAW

- 1. The South Dakota Board of Nursing has jurisdiction and authority over this matter pursuant to SDCL §§ 36-9-1.1 and 36-9-49.
- 2. That the South Dakota Board of Nursing as well as the South Dakota Board of Medical and Osteopathic Examiners ("Joint Board") have joint jurisdiction over the person of the Licensee and her CNP license pursuant to SDCL §§ 36-9A-5 and 36-9A-29.
- 3. That Licensee's conduct, as identified in the Findings of Fact, is inconsistent with the health and safety of persons entrusted to her care and violates the statutes, rules, and regulations regarding the practice of advance practice nursing and are

in violation of SDCL § 36-9A-29(9) and (10) in that the Licensee has violated the laws of the State by engaging in the performance of advanced practice nursing and medical functions beyond the scope of practice authorized by any current collaborative agreement.

THEREFORE, let an order be entered accordingly:

ORDER

Based on the Findings of Fact and Conclusions of Law, the South Dakota Board of Nursing and the Joint Board hereby orders:

- 1. That the Licensee's license to practice as a registered nurse in the State of South Dakota is hereby reinstated.
- 2. That the Licensee license to practice as a Certified Nurse Practitioner in the State of South Dakota shall be hereby reinstated.
- 3. That the Joint Boards, according to the disciplinary procedures outlined in ARSD 20:48:08, issues this LETTER of REPRIMAND against Licensee's CNP license.
- 4. This final action is reportable discipline and will be published in Board's newsletter and posted on its website and reported into the HIPDB and NPDB data banks as required by law. As this is reportable discipline, the Licensee is required to provide an affirmative response to enquiries of disciplinary action on further renewals and other nursing related enquiries.

8-1.

IT IS HEREBY ORDERED that the above Reinstatement Order of RN License and the Reinstatement of CNP License with LETTER of REPRIMAND was adopted by the South Dakota Board of Nursing on the 19th day of June, 2009 by a vote of

Dated this ghand day of July 2009.

SOUTH DAKOTA BOARD OF NURSING

Gloria Damgaard, Executive Director

SOUTH DAKOTA BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS

Margaret B. Hansen, Executive Director